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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,868	11/28/2000	Daniel Faneuf	FANEUF 00.02	6422

7590

02/13/2004

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EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

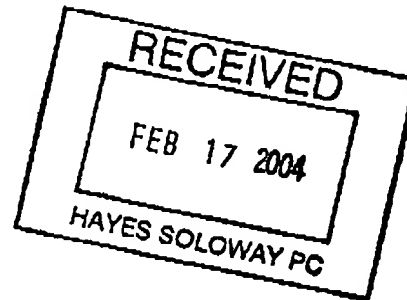
3644

DATE MAILED: 02/13/2004

Adv. Act.

3/10/04
4/10/04

Please find below and/or attached an Office communication concerning this application or proceeding.



Advisory Action

Application No.

09/723,868

Applicant(s)

FANEUF, DANIEL

Examiner

Kimberly S Smith

Art Unit

3644

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—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 02 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): the 35 U.S.C. 112 second paragraph rejection of claim 2.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 2, 4, 5, 7, 8, 10-13, 15-17, 19-22.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Charles T. Jordan
CHARLES T. JORDAN
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Continuation of 5. does NOT place the application in condition for allowance because: the argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning has not been found persuasive. It must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the invention was made (i.e. that clips and ropes are used in conjunction with each other for culling fish), and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. It is noted in the Applicant's response to the after-final amendment, it is stated that the applicant's claim include the limitation that the clip is "capable of exerting a force on the biasing member thereby increasing the gripping force". This limitation has not been claimed as the Applicant has asserted. Claim 1 states that the biasing member is used to "create a gripping force between the first and second protusions.....capable of holding a fish by a tip without punching a hole in the fish". It is further noted that it is the loop (of the length of rope) which is stated to be "capable" of exerting a force....thereby increasing the gripping force. This limitation holds true for any instance in which a rope is attached to a holding member due to the fact that as the rope is raised, the gravitation force acting in the direction opposite from the rope due to the weight of the item being clipped is increased and thereby the gripping force required to maintain the object within the clip increases.